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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|----------------------------------|------------------|
| 10/625,936 | 07/24/2003 | Michael Lebner | 0156-2009US01 | 9901 |
| 7590 Kevin M. Farrell Pierce Atwood Suite 350 One New Hampshire Avenue Portsmouth, NH 03801 | | 12/27/2006 | EXAMINER PETRIK, KARI KRISTEN | |
| | | | ART UNIT 3772 | PAPER NUMBER |
| SHORTENED STATUTORY PERIOD OF RESPONSE | | MAIL DATE | DELIVERY MODE | |
| 3 MONTHS | | 12/27/2006 | PAPER | |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/625,936 | LEBNER, MICHAEL | |
| | Examiner | Art Unit | |
| | Kari Petrik | 3772 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 November 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-34 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-34 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>11/13/2006</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 11/13/2006 has been entered.

Information Disclosure Statement

2. The information disclosure statement filed 11/13/2006 has been received and made of record. Note the acknowledged form PTO-1449 enclosed herewith.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5, 9, 10, 12, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacoby (US Patent 2,818,865) in view of Preller (US Patent 5,263,970).

5. As regards claim 1, Jacoby substantially discloses applicant's presently claimed invention. More specifically, Jacoby discloses a two-component device for closing a laceration

Art Unit: 3772

or incision, comprising: a first component comprising a first adhesive-backed anchoring member (14) and one or more first connecting members (15) extending from one edge thereof in a first direction, a second component comprising a second adhesive-backed anchoring member (12) and one or more second connecting members (16) extending from one edge thereof in a second direction generally opposite to the first direction, and adhesive means (column 1, lines 50-51) for attaching the one or more first connecting members to the second anchoring member and means for attaching the one or more second connecting members to the first anchoring member, the attachment of the connecting members to the anchoring members forming attached and bridging portions of the one or more connecting members, the attached portions being attached to an anchoring member, and the bridging portions spanning the over-laceration area between the first and second anchoring members (see Figure 3).

Jacoby fails to explicitly teach that the first and second components are transparent and inelastic. However, Preller teaches a wound closure device made of a substantially inelastic material (plastic) having at least semi-transparent first and second components in order to allow visualization of the wound during the closing process.

In view of Preller, it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the first and second components from at least semi-transparent plastic material in order to allow visualization of the wound during the closing process.

6. Regarding claim 2, Jacoby discloses pulling elements (12a and 14a).
7. Regarding claims 3 and 5, Jacoby in view of Preller substantially teach the claimed invention as applied to claims 1 and 2, but do not teach that the anchoring members and pulling

Art Unit: 3772

elements are distinct geometric shapes to distinguish between the two elements. However it would have been an obvious design choice to one having ordinary skill in the art at the time the invention was to make the anchoring and pulling elements different shapes since it has been held that a change in shape involves only routine skill in the art and the elements of Jacoby would perform equally well to hold the incision closed. This obvious change in shape would serve as coding by enabling user distinction between the two elements.

8. Regarding claims 9, 10, and 12, the means for attaching the one or more connecting members is adhesive being applied to the lower surface of the connecting members and are protected by release liners for protecting the adhesive (column 1, lines 50-55).

9. Regarding claim 18, mere use of the modified device of discussed above in the rejection of claim 1 above obviates the claimed invention. The applicant should note that manipulating the pulling elements for attachment onto the anchoring member such that the wound or laceration is closed, necessarily involves adjusting the position of anchoring members in both an x and y dimension.

10. Claims 3, 4, 6-8, 11, and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacoby (US Patent 2,818,865) in view of Preller (US Patent 5,263,970) and in further view of Lebner (6,329,564).

11. Regarding claims 3, 6, 7, 11, and 13-15, Jacoby in view of Preller substantially disclose the claimed invention as applied to claim 1, but do not disclose coding comprising indicia, distinguishing colors or alignment indicators.

Art Unit: 3772

Lebner however teaches a bandage including visual alignment indicators (column 4, lines 38-53), and indicia (e.g. color, graphic representations, etc.) for the purpose of indicating specific information to the user (column 5, lines 1-21). It would have been obvious to one having ordinary skill in the art at the time of the invention to provide the bandage of Jacoby having indicia of various types, as taught by Lebner, in order to indicate any information to the user.

12. Regarding claim 4, Lebner teaches pulling element and extensions of the connecting members are removable at the perforations (17, 37) following application of the device. The applicant should note that the extension of the connecting members is defined as the portion of the connecting member severed with pulling elements (40, 45).

13. Regarding claim 8, Lebner teaches making the device constructed from a vapor-permeable (*i.e.*, allow for the exchange of air) material (col. 3, lines 5-15). It would have been obvious to one having ordinary skill in the art to provide the bandage of Jacoby being vapor permeable, as taught by Lebner, to provide comfort to the user and allow air to flow to the wound.

14. Regarding claims 16 and 17, Lebner teaches the use of reinforcements (col. 2, lines 60-col. 3, line 4) applied to the bandage. It would have been obvious to one having ordinary skill in the art to provide the bandage of Jacoby having reinforcements, as taught by Lebner, to provide more support and reinforcement to the bandage.

15. Regarding claims 19-34, note the rejection of claims 2-17, respectively.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kari Petrik whose telephone number is 571-272-8057. The examiner can normally be reached on M-Th and every other Friday, 7-4:30.

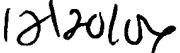
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kari Petrik
Examiner
Art Unit 3772

KKP


PATRICIA BIANCO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

12/20/05